

² The Board notes that, following the February 11, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issue is whether appellant has met her burden of proof to establish total disability from work for the period July 6, 2019 and continuing causally related to the accepted July 24, 2017 employment injury.

FACTUAL HISTORY

On September 11, 2017 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 24, 2017 she strained her back when she lifted a small refrigerator up stairs using a hand cart while in the performance of duty. On December 11, 2017, OWCP accepted the claim for other intervertebral disc displacement, lumbar region, and radiculopathy, lumbar region.³ Appellant received compensation on the supplemental rolls effective September 11, 2017, and the periodic rolls effective January 7, 2018. Appellant accepted a modified limited-duty position, returned to work on May 7, 2018 and thereafter OWCP paid her intermittent wage-loss compensation on the supplemental rolls.

On May 7, 2019 OWCP referred appellant, along with the medical record, a statement of accepted facts and a series of questions to Dr. William A. Somers, a Board-certified orthopedic surgeon, for a second opinion examination to determine her current work restrictions.

In a form report dated May 29, 2019, Dr. James E. Rice, a Board-certified orthopedic surgeon, and appellant's treating physician, noted that appellant could perform light-duty work for four hours per day, with limited bending, stooping, standing, walking, and no lifting over 15 pounds. He advised that these restrictions were due to her back injury.

In a June 3, 2019 report, Dr. Somers noted appellant's history of injury and medical treatment. He reviewed appellant's diagnostic studies and performed a physical examination. Dr. Somers diagnosed lumbar degenerative disc disease and facet arthrosis aggravated by the employment injury, lateral recess and foraminal stenosis L3-5 aggravated by the employment injury; and intermittent L3-5 radiculopathy secondary to the accepted injury. He determined that appellant's work-related conditions had not yet resolved and that she was not capable of returning to her rural carrier position without assistance; however, appellant was capable of returning to work with restrictions on lifting, pulling, and pushing. Dr. Somers related that it might be beneficial for appellant to be out on her route, with restrictions. He completed a work capacity evaluation form (OWCP-5c) and noted that appellant could perform sedentary or light work and occasionally twist, bend, or stoop. Dr. Somers provided a weight limitation of 25 pounds on pushing, pulling, and lifting, occasional twisting, bending, stooping, and a 5-pound limitation on squatting, kneeling, and climbing.

On June 21, 2019 the employing establishment provided appellant a modified assignment. The hours were listed from 0730 to 1530, with days off as Saturday and Sunday. The assignment title indicated "rural carrier." The duties of the modified assignment included case route 1 mail Monday through Friday for 2 hours, load route 1 mail and packages Monday through Friday for

³ Appellant stopped work on September 11, 2017 and returned on May 7, 2018. She accepted a full-time modified job offer on February 21, 2019.

30 minutes, deliver route 1 mail Monday through Friday for 5.5 hours. The physical requirements included bending and stooping 2.5 hours per day, twisting occasionally 2 hours per day, pushing, pulling, and lifting up to 25 pounds 2.5 hours per day, and squatting, kneeling and climbing intermittently 2.5 hours per day. It noted that the job was temporary because appellant was not at maximum medical improvement and it was possible that her restrictions would change. It also noted that the assignment would remain within the physical restrictions provided by the treating physician and was subject to revision based upon changes in the restrictions and the availability of suitable work.

On July 1, 2019 appellant rejected the offer and noted that she had a “conflicting doctor opinion and [was] waiting further diagnosis.” In a July 1, 2019 form report, Dr. Rice indicated that appellant could not work until July 8, 2019.

In a July 10, 2019 report, Dr. Rice noted that appellant had low back pain and that he had administered a corticosteroid injection. He provided a July 15, 2019 form report placing appellant off work until July 20, 2019.

In a letter dated July 19, 2019, OWCP notified appellant that she had refused the offered position as a modified rural carrier, despite it falling within the restrictions provided by Dr. Somers. It allotted appellant 30 days to accept the position or provide a valid reason for failure to accept the position.

In a July 29, 2019 form report, Dr. Rice indicated that appellant was unable to work until August 30, 2019. In another July 29, 2019 report, he diagnosed low back pain, lumbar disc degeneration, and sciatica.

On August 13, 2019 appellant filed a claim for compensation (Form CA-7) for the period July 6 through 19, 2019. The employing establishment noted that appellant refused a modified offer, which had been deemed suitable. An attached time analysis (Form CA-7a) dated August 13, 2019, indicated that she was claiming eight hours of leave without pay (LWOP) per day from July 8 through 19, 2019 per doctor’s orders. Appellant continued to file CA-7 forms for eight hours of LWOP per day.

In a letter dated August 16, 2019, OWCP advised appellant that additional evidence was needed to establish her disability from work for the period July 6 through August 2, 2019. Appellant also was advised by OWCP of the penalties for refusing an offer of suitable work on July 19, 2019. It afforded appellant 30 days to respond to submit additional evidence.

On August 26, 2019 OWCP notified appellant that the modified job offer remained available and allotted her an additional 15 days to accept the offer.

In an August 28, 2019 report, Dr. Rice noted appellant’s physical examination findings and diagnosed lumbar disc degeneration, sciatica, and low back pain.

In a September 23, 2019 decision, OWCP terminated appellant’s wage-loss and entitlement to schedule award compensation, effective September 20, 2019, for refusal of suitable work, pursuant to 5 U.S.C. § 8106(c)(2). It found that the job offer was suitable.

In a September 26, 2019 disability certificate, Dr. Rice indicated that appellant was unable to work until November 1, 2019. In a progress report dated September 26, 2019, he diagnosed lower back pain, lumbar disc degeneration, and sciatica.

On October 14, 2019 appellant filed a Form CA-7 for the period September 14 through 27, 2019. The employing establishment noted, “comp term [compensation terminated] 9/20/19, 5 U.S.C. 8106.” An attached Form CA-7a dated October 14, 2019, indicated that appellant was claiming eight hours of LWOP per day.

Appellant continued to file forms CA-7, claiming additional periods of disability through January 31, 2020.

On October 17, 2019 appellant requested a hearing before a representative of OWCP’s Branch of Hearings and Review.

In an October 23, 2019 report, Dr. Rice diagnosed sciatica and low back pain.

In a January 2, 2020 decision, an OWCP hearing representative noted that a preliminary review was conducted resulting in the reversal of the September 23, 2019 decision. The hearing representative noted that appellant had been working a limited-duty assignment for four hours a day based on restrictions from Dr. Rice, and OWCP had been paying for four hours of wage-loss compensation a day. OWCP referred appellant to Dr. Somers and he opined that appellant was able to work full time with restrictions, on a temporary basis. The hearing representative explained that there was no documentation of record that the June 21, 2019 modified assignment was permanent because it contained language that the position was subject to revision based upon changes in appellant’s physical restrictions and the availability of adequate work, which would not equate to permanency. OWCP’s hearing representative explained that a temporary job would be considered unsuitable, unless appellant was a temporary employee when injured and the temporary job reasonably represented the claimant’s wage-earning capacity. The hearing representative also referred to 20 C.F.R. § 10.500(a) and explained that “[b]enefits are only available while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee’s work-related medical condition prevents him or her from earning the wages earned before the work-related injury.” As such, any claimant who declines a temporary light-duty assignment deemed appropriate by OWCP is not entitled to compensation for total wage loss during for the duration of the assignment. OWCP’s hearing representative reversed the September 23, 2019 decision and returned the case to OWCP for reinstatement of compensation and schedule award benefits retroactive to the date of termination. The hearing representative further related that, as appellant was working four hours per day prior to the June 21, 2019 full-time job offer, OWCP should review 20 C.F.R. § 10.500(a) to address the claimed wage loss. The record does not indicate that appellant’s compensation was reinstated to the date of the termination.

By corrected development letter dated January 10, 2020, OWCP noted that appellant stopped work on July 6, 2019. It explained that the evidence was insufficient to establish that appellant’s disability was caused by the work injury and that pain was not a valid diagnosis. OWCP also noted that light or limited-duty work was available within her medical restrictions and requested that appellant submit evidence as to why she did not accept the light/limited-duty

assignment. It also requested that appellant submit a well-reasoned medical report from her physician detailing, with objective findings, how her condition worsened such that she was unable to perform the duties of her position when she stopped work on July 6, 2019. OWCP afforded her 30 days to submit the requested evidence.

In a January 15, 2020 disability certificate, Dr. Rice diagnosed sciatica and intervertebral disc degeneration and indicated that appellant was unable to work from July 15, 2019 to the date of his report due to chronic back injury, which had caused sciatica and intervertebral disc degeneration. In a report dated January 23, 2020, Dr. Rice noted appellant's physical examination findings and diagnosed sciatica and low back pain.

By decision dated February 11, 2020, OWCP denied appellant's claims for compensation for the period July 6, 2019 and continuing. It specifically found that appellant had not submitted medical evidence to establish that she was totally disabled as of July 6, 2019 and continuing.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of reliable, probative, and substantial medical opinion evidence.⁷

20 C.F.R. § 10.500(a) provides that, in an accepted claim, an employee is not entitled to compensation for any wage loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.

ANALYSIS

The Board finds this case is not in posture for decision.

⁴ *Supra* note 1.

⁵ *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See C.E.*, Docket No. 19-1617 (issued June 3, 2020).

⁷ 20 C.F.R. § 10.5(f); *see W.C.*, Docket No. 19-1740 (issued June 4, 2020); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

In a January 2, 2020 decision, OWCP's hearing representative reversed the September 23, 2019 decision, which terminated appellant's wage-loss and entitlement to schedule award compensation, effective September 20, 2019, for refusal of suitable work, pursuant to 5 U.S.C. § 106(c)(2). OWCP's hearing representative explained that the evidence of record did not establish that the job offer was for a permanent position, as it indicated that the position would be temporary in nature.

OWCP's hearing representative returned the case to OWCP for reinstatement of compensation and entitlement to schedule award benefits retroactive to the date of termination, September 20, 2019, and indicated that OWCP should review 20 C.F.R. § 10.500(a) to address the claimed wage loss after the job offer was made. However, the record does not reflect that appellant's compensation was reinstated and OWCP made no further findings related to 20 C.F.R. § 10.500(a).

OWCP's regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, its procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence, which would overcome it.⁸

In the February 11, 2020 decision, OWCP found that appellant had not submitted medical evidence to establish that she was totally disabled as of July 6, 2019 and continuing. It continued to deny appellant's claims for wage loss without addressing the issues outlined in OWCP's hearing representative's January 2, 2020 decision.

The Board will remand the case to follow the instructions provided in OWCP's hearing representative's January 2, 2020 decision. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 25, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board